



REPUBLIKA E KOSOVËS - РЕПУБЛИКА КОСОВО - REPUBLIC OF KOSOVO
GJYKATA KUSHTETUESE
УСТАВНИ СУД
CONSTITUTIONAL COURT

Prishtina, 24 March 2014
Ref.no.:RK 577/14

RESOLUTION ON INADMISSIBILITY

in

Case No. KI209/13

Applicant

Mustafë Musa

**Request for “[...] interpretation of part of the Judgment” in Case
KO108/13 of 9 September 2013.**

THE CONSTITUTIONAL COURT OF THE REPUBLIC OF KOSOVO

composed of

Enver Hasani, President
Ivan Čukalović, Deputy-President
Robert Carolan, Judge
Altay Suroy, Judge
Almiro Rodrigues, Judge
Snezhana Botusharova, Judge
Kadri Kryeziu, Judge, and
Arta Rama-Hajrizi, Judge.

Applicant

1. The Applicant is Mr. Mustafë Musa, a practicing lawyer from Gjilan.

Subject matter

2. The subject matter of the Referral is the request for interpretation related to a part of the Judgment of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Court”) in Case KO108/13 of 9 September 2013 and to the Law on Amnesty.

Legal basis

3. The Referral is based on Article 113.7 of the Constitution, Article 47 of the Law, No. 03/L-121, on the Constitutional Court of the Republic of Kosovo (hereinafter: the “Law”) and Rule 56 of the Rules of Procedure of the Constitutional Court of the Republic of Kosovo (hereinafter: the “Rules of Procedure”).

Proceedings before the Court

4. On 19 November 2013, the Applicants submitted the Referral to the Court.
5. On 3 December 2013, the President of the Constitutional Court by Decision, No. GJR. KI209/13, appointed Judge Kadri Kryeziu as Judge Rapporteur. On the same date, the President of the Court by Decision, No. KSH. KI209/13, appointed the Review Panel composed of Judges Robert Carolan (Presiding), Almiro Rodrigues, and Ivan Čukalović.
6. On 9 December 2013, the Court notified the Applicant of the registration of the Referral.
7. On 20 January 2014, the Review Panel considered the Report of the Judge Rapporteur and made a recommendation to the Court on the Inadmissibility of the Referral.

Applicant’s statements

8. The Applicant is “[...] seeking interpretation – explanation of Judgment KO No. 108/2013 of 9 September 2013, on the Law on Amnesty”. He asks for clarification whether “the Law on Amnesty is applicable on the entire territory of Kosovo or only partially – only in North Mitrovica.”
9. The Applicant states that “In practice there are great dilemmas in relation to the application of the Law on Amnesty, no. 04/L-209, on which there is also a Judgment of your court KO. No. 108/2013 of 9 September 2013, specifically on the interpretation of the provisions of Articles 3.1.1.13, respectively 3.1.2.8 and 3.1.3.4. of this law, on the criminal offense of Calling to Resistance (article 411) of the Criminal Code of the Republic of Kosovo (“Official Gazette of the Republic of Kosovo”, no. 19/13, July 2012), (Article 319) of the Criminal Code of Kosovo (“UNMIK Regulation no. 2003/25”, of 6 July 2003 “Official Gazette of Kosovo”, no. 2003/25 and UNMIK Regulation no. 2004/19 on the amendment of the Provisional Criminal Code of Kosovo, and (Article 186) of the Criminal Code of the SAPK (“Official Gazette”, no. 20/77 in relation to

UNMIK Regulation no. 1999/24 and 2000/59 on the applicable law in Kosovo).”

10. The Applicant further claims that *“In practice there is a dilemma among the Judges and prosecutors, regarding the mentioned provisions ‘Call to Resistance’ respectively ‘Incitement to Resistance’ and the actions listed in these paragraphs as to whether only the persons that have explicitly incited to resistance or all the citizens of the Republic of Kosovo benefit from the Law on Amnesty, since all of those that have not acted pursuant to the applicable provisions, in one way or another have resisted the governing authorities, so is the Law on Amnesty applied equally in the entire territory of the Republic of Kosovo or only partially in the area of North Mitrovica.”*

Admissibility of the Referral

11. The Court observes that, in order to be able to adjudicate the Applicant’s Referral, it is necessary to examine whether he has fulfilled the admissibility requirements laid down in the Constitution as further specified in the Law and the Rules of Procedure.
12. In this respect, the Court shall examine whether the Applicant is an authorized party in submitting the respective Referral.
13. In the case at hand, the Applicant is seeking an interpretation related to a part of the Court’s Judgment in Case KO 108/13 of 9 September 2013 and to the Law on Amnesty, namely whether the Law on Amnesty is applicable on the entire territory of Kosovo or only partially, because it is not clear whether the Law on Amnesty applies on the entire territory of Kosovo or only for North Mitrovica.
14. Further, the Applicant seeks clarification related to the applicability of the Law on Amnesty and interpretation of certain provisions of the law in question as stated in paragraph 9 above.
15. Moreover, the Applicant considers that there is a dilemma among judges and prosecutors on the application of the Law on Amnesty as stated in paragraph 10 above.
16. In this respect, the Court refers to Article 113.1 of the Constitution which provides: *“The Constitutional Court decides only on matters referred to the court in a legal manner by authorized parties.”*
17. The Court notes that the Applicant submitted his Referral under Article 113.7 of the Constitution, which provides: *“Individuals are authorized to refer violations by public authorities of their individual rights and freedoms guaranteed by the Constitution, but only after exhaustion of all legal remedies provided by law.”*
18. The Court notes that the Applicant’s request for interpretation and clarification is not based on a constitutional or legal basis. Furthermore, the Applicant does not show how and why he might be a victim of the Judgment of the Court in Case KO108/13 of 9 September 2013, or that any of his constitutional rights

might be affected by this Judgment, because, as alleged by the Applicant, the Judgment is unclear.

19. As understood by the Court, where it concerns a request for an interpretation regarding the territorial application of the Law on Amnesty, there is no constitutional right that empowers individuals to bring such a Referral before the Court.
20. The Court reiterates that under Article 113.8 of the Constitution, the regular courts are authorized “[...] to refer questions of constitutional compatibility of a law to the Constitutional Court when it is raised in a judicial proceeding and the referring court is uncertain as to the compatibility of the contested law with the Constitution and provided that the referring court’s decision on that case depends on the compatibility of the law at issue.”
21. Furthermore, under Article 113.5 of the Constitution it is provided that “Ten (10) or more deputies of the Assembly of Kosovo, within eight (8) days from the date of adoption, have the right to contest the constitutionality of any law or decision adopted by the Assembly as regards its substance and the procedure followed.”
22. In addition, the Constitution under Article 113.2 (1) also empowers “The Assembly of Kosovo, the President of the Republic of Kosovo, the Government, and the Ombudsperson [...] to refer the following matters to the Constitutional Court: (1) the question of the compatibility with the Constitution of laws, of decrees of the President or Prime Minister, and of regulations of the Government;”.
23. The Court having in mind the quoted provisions of the Constitution concludes that the Applicant is not an authorized party to bring such a request.
24. As far as the Applicant’s alleged observation that there exists a dilemma among the Judges and prosecutors as to the application and interpretation of certain provisions of the Law on Amnesty, the Court notes that there is no constitutional basis for such a request.
25. Thus, the Court taking into consideration the abovementioned constitutional provisions concludes that the Applicant is not an authorized party.
26. Consequently, the Applicant’s Referral is inadmissible, pursuant to Article 113.1 of the Constitution.

FOR THESE REASONS

The Constitutional Court, pursuant to Article 113.1 of the Constitution and Rule 56.2 of the Rules of Procedure, on 21 January 2014, unanimously


DECIDES

- I. TO DECLARE the Referral Inadmissible;
- II. TO NOTIFY the Parties of this Decision;
- III. TO PUBLISH this Decision in the Official Gazette, in accordance with Article 20 (4) of the Law;
- IV. TO DECLARE this Decision effective immediately.

Judge Rapporteur

President of the Constitutional Court


Dr. sc. Kadri Kryeziu


Prof. Dr. Enver Hasani

